Chapter 4
Complaint Handling

Lodging of Complaints

4.1 Most complaints come in by post. Some complainants come to our Office and are received by counter staff. Our investigation officers serve in rotation as duty officers to interview complainants in person. Where complainants have difficulty in putting their case in writing, our duty officers will take down the details for their verification later by post. We also accept complaints via e-mail, though subsequent correspondence in further processing will be by post to ensure security of the information. For simple initial cases, we have arrangements for complaints by telephone[1]. Generally, such cases should be capable of being explained in less than 15 minutes, involve two organisations or less and not a great deal of documentary evidence.

Fig. 4.1

Complaints Received in 2001/02 - 2003/04

Mode	2001/02	2002/03	2003/04
In person	260	425	324
In writing -			
by letter	1,116	682	1,634
by complaint form	828	1,270	722
by fax	664	978	972
by e-mail #	360	613	742
By telephone*	508	414	267
TOTAL	**3,736**	**4,382**	**4,661**

introduced in January 2000
* introduced in March 2001

Regardless of the mode, complainants must identify themselves and we are required to be satisfied that they are the aggrieved parties.

Assessment

4.2 My counter staff, duty officers and Assessment Team form the front-line of my Office. Members of the team scrutinise all in-coming complaints and enquiries. Where it is evident from the outset that a matter falls outside my purview (**Fig. 2.3**), is subject to restrictions (**Fig. 2.4**) or is not to be investigated by discretion exercised by The Ombudsman (**Fig. 2.5**), we aim to notify complainants within 15 working days. Where possible, we try to help and advise where and how they may seek assistance or redress. (See **Fig. 5.2** for our performance pledges.)

4.3 Complaints within my purview are "screened in" for examination by one of four investigation teams. Each team is headed by a Chief Investigation Officer working to one of two Assistant Ombudsmen.

Preliminary Inquiries

4.4 To determine whether a full investigation is necessary, we conduct preliminary inquiries for facts and information under section 11A of the Ordinance. Preliminary inquiries may take the form of Internal Complaint Handling Programme (INCH) or Rendering Assistance / Clarification (RAC). Often, they result in the matters under complaint being resolved or clarified.

1 The conversation is recorded on tape and then written up for verification with complainant by post.

Fig. 4.2

Preliminary Inquiries

Type	Process	Cases concluded
INCH	With the consent of complainants, simple cases are referred to the organisations concerned for investigation and reply direct to the complainant. The Ombudsman may request the organisations to provide specific information in its reply, monitors the process and scrutinises the reply, intervening when the reply is not satisfactory. This may lead to RAC or full investigation.	203
RAC	The Office collects the facts relating to the case. If the facts fully explain the matter under complaint, the findings with observations will be presented to the complainant, with suggestions to the organisations concerned on remedial action and improvement, where appropriate. If further action is called for, a full investigation will be conducted.	1,631

4.5 Preliminary inquiries are an important means for processing complaints of varying complexity. They generally take less time for completion. However, as with full investigations, my Office will follow up with the organisations concerned their implementation of our suggestions to them. As shown in **Fig. 4.2**, a total of 1,834 complaints were resolved by preliminary inquiries in 2003/04.

Mediation

4.6 Where a complaint involves only minor or no maladministration, The Ombudsman may deal with the complaint by "alternative dispute resolution": namely, mediation. This must have the consent of both the complainant and the organisation concerned. It is a voluntary process provided by section 11B of the Ordinance. The complainant and representative of the organisation agree to meet and explore a mutually acceptable solution to the subject under complaint. Investigators of our Office who have been trained as mediators act as impartial facilitators of the dialogue.

4.7 If mediation does not resolve matters, the Office may then initiate preliminary inquiries where warranted. In that event, another investigator will be assigned to handle the case afresh, to ensure impartiality as well as confidentiality of the information from the parties provided during mediation.

Full Investigation

4.8 For complex cases involving issues of principle, serious maladministration, gross injustice, systemic flaws or significant

deficiencies, I will direct a full investigation. The process necessitates extensive probing for comprehensive evidence collection. We search original documents and study subject files. We also seek statements from persons involved and may interview them in person where necessary. At times, we consult members of our Panel of Professional Advisers. They are experts of repute with considerable standing in the legal, medical and engineering fields (**Annex 14**) whom I have appointed under section 6A of the Ordinance to advise and assist me.

4.9 The organisation under complaint is given every opportunity to comment and to make representations on my draft investigation report. Individuals subject to our criticism are specifically given the opportunity to explain and be heard. In recommending administrative remedies, we aim to make for more open and client-oriented, transparent and accountable public administration. Heads of organisations have a duty to report to me at regular intervals the progress of their implementation of my recommendations.

Investigation and Internal Monitoring

4.10 I am assisted by my Deputy, two Assistant Ombudsmen and four teams in investigating complaints and monitoring our recommendations. I have delegated to each level specific authority for acting on my behalf. As a general rule, the work of investigation officers is carefully vetted and monitored by team leaders. Reports and replies are scrutinised by the directorate and then finalised by me in conclusion.

4.11 We have a computerised complaint management system, which readily provides information on individual cases and facilitates compilation of statistics. With its assistance, my directorate and I can closely monitor the progress of our investigations .

4.12 In this context, my investigation teams work under close scrutiny. My Deputy and the Assistant Ombudsmen hold meetings regularly with individual teams, to keep tabs on cases under processing. These sessions provide a forum for frank exchange of views and analysis of facts, debate on contentious points and directions for further action. Above all, they ensure consistency in case work and offer opportunities for sharing experience.

4.13 To keep myself well posted on our operations, I attend meetings of each team at least once a month. In this way, I directly guide investigations, clear uncertainties and discuss strategies on complex cases.

4.14 From time to time, I convene open forums to update staff on concepts, principles and philosophy on matters within my purview. These help to promote mutual understanding and enhance *esprit de corps*. Through these discussions, we refine operational processes, standardise practices and generate new ideas.

Outcomes of Investigation

4.15 On conclusion of each full investigation, a complaint is classified by the extent to which maladministration has been found: “substantiated”, “partially substantiated” or “not substantiated”. During the year under report, I found cases

where although the specific allegations in the complaint were not substantiated, other significant acts of maladministration were identified in the course of our investigation. I feel duty-bound to expose those defects. For this, I have introduced the classification of "substantiated other than alleged" to highlight the gravity of the maladministration unearthed. These classifications are defined in **Annex 2**.

Code on Access to Information

4.16 In March 1995, Government introduced on a pilot basis an administrative Code on Access to Information for open and accountable government. The Code has been extended progressively to all Government bureaux and departments since December 1996.

4.17 Where a bureau or department fails to comply with the Code, an applicant may lodge a complaint with me to seek a review of the initial decision by the organisation in receipt of the request for information. In the five years since 1999/2000, we have dealt with 25 such complaints.

Fig. 4.3

Complaints Relating to Code on Access to Information handled since 1999/2000

1999/2000	8
2000/01	4
2001/02	1
2002/03	3
2003/04	9

Patterned Issues

4.18 Whilst we examine each case independently, sometimes a "pattern" of similar complaints emerges and calls for a more global view.

Seepage : Perennial Cause for Complaint

4.19 Seepage continues to be a common complaint. Such cases involve three departments – Food and Environmental Hygiene, Buildings and Water Supplies – each having a specific role in law for different aspects of seepage. Where seepage occurs in public housing, Housing Authority and Housing Department are involved. Given its persistence and prevalence as a major cause for complaint, my Office considers there may be scope for a comprehensive study by direct investigation.

Contracting-out of Services

4.20 Since the 1990s, contracting-out has become an increasingly popular mode of service delivery by many Government departments to achieve value for public money and the concept of "small government". In the face of financial stringencies, this will continue to be the trend. While this has reaped positive financial returns, our Office has seen a rising number of public complaints about services provided by contractors and inadequate supervision over contractors by Government departments. We have found unsatisfactory services, due to contractors' lack of experience in public services, absence of proper guidelines for contractors or patchy performance in monitoring by departments. "Buck-passing" between departments and contractors has also been observed in

some cases. (See, for example, summary of case no. OMB 2002/4610 in **Annex 12**.)

4.21 It is the view of our Office that, while departments should maximise the benefits of contracting-out and not micro-manage their contractors, prudent contract management with close monitoring of contractors' performance is essential to the maintenance of public accountability as well as service standards. This includes :

- stipulating clearly the expertise and experience required of contractors in tender specifications;
- ensuring that contracts are unequivocal on service standards, with safeguards and quality assurance for service recipients, say, by complaint mechanism;
- providing contractors with clear policy guidelines and operation manuals (drawn up in collaboration with the contractors where appropriate);
- briefing contractors' staff on departmental expectations; and
- monitoring diligently contractors' performance by regular surprise checks and evaluation system with awards and penalties.

4.22 In the final analysis, accountability remains with Government. It constitutes maladministration on the part of Government departments if their contractors are not prevented or stopped from providing sub-standard service to the public.

Inter-departmental Co-ordination

4.23 In my last Annual Report, I mentioned the problem of "buck-passing" among departments where inter-departmental co-ordination is called for. Such cases continued to surface this year. In a typical case, the complainant enquired about a ferry operator's application for development of passenger facilities on a public pier. Lands and Transport Departments kept telling the complainant to approach the other department as the responsible department, instead of conferring between themselves to arrive at a common stance on the matter. This left the complainant with nowhere to turn to. (See summary of case no. OMB 2003/2039 & 2040 in **Annex 12**.)

4.24 Another aspect of inter-departmental co-ordination is insufficient appreciation of the combined effect of different departmental policies on individual citizens. In a typical case, the Buildings Department (BD) issued an order for demolition of an illegal structure on a target building but, in accordance with established policy, not another at the same unit. Shortly after the owner of the unit had complied with the order and removed the first illegal structure, he received a cautionary advice from the Environmental Protection Department (EPD) for removing the second illegal structure, which contained asbestos. The complainant was confused and frustrated by BD's order and EPD's advice. The departments could have synchronised their action better. (See summary of case no. OMB 2003/2024 & 2025 in **Annex 12**.)

Reluctance in Enforcement

4.25 A number of departments demonstrated reluctance to take enforcement action after their repeated notices and even warnings had been ignored. In some cases, officers of the Food and Environmental Hygiene

Department (FEHD) were unable to gain entry on premises to investigate complaints of seepage because the owner or occupier of the premises either refused or ignored notices requesting entry. In law, FEHD officers could apply for warrants for entry. However, they were reluctant to take such enforcement action and instead, merely made repeated persuasive attempts. As a result, the complainant had to suffer for months without any answer regarding even the source of seepage.

4.26 In another, even more blatant case, a public housing tenant had for years been complaining to the Housing Department (HD) about seepage from the floor above. However, the tenant above was uncooperative and refused entry by HD officers for inspection. Over four years, HD issued 61 letters (including eight warnings) but still could not enter the floor above. Even so, HD did not exercise its authority under the tenancy agreement to issue a Notice to Quit to the uncooperative tenant to enforce its power of entry. Consequently, the complainant had to suffer the nuisance from seepage indefinitely. (See summary of case no. OMB 2003/1989 & 3238 in **Annex 12**.)

Hiding behind Prioritisation

4.27 We realise that in the face of manpower and resource constraints, Government departments need to prioritise their services. However, this is not licence to do nothing. We have repeatedly come across offices and officers with such attitude, notably in land administration, where "low priority" is tantamount to "no priority".

4.28 In a typical case, a person applied in late 1999 for use of a piece of land in the New Territories as storage shed. Normal processing time by the Lands Department for such applications is three months. However, as such applications are accorded low priority by the Department, that application was not processed until early April 2003 well over 40 months later, when the Department conducted an overall review and decided to process them according to the dates of application. Eventually, processing of the application in question was completed in June 2003.

4.29 We cannot accept inaction on the excuse of "low priority". First, members of the public are entitled to know the timeframe within which their applications will be processed. Second, when land applications are not processed for an inordinately long time, it is likely to encourage unlawful use of land.

Reports to the Chief Executive

4.30 In my last Annual Report, I reported that Housing, Planning and Lands Bureau (HPLB), BD and Lands Department had not adequately implemented our recommendations made in a 1996 direct investigation on the subject of unauthorised building works (UBW) in the New Territories. For this reason, I had invoked section 16(3) of The Ombudsman Ordinance and reported the matter to the Chief Executive, who directed HPLB to follow up. While HPLB reported the action that Government had taken, it did not appear to be adequate. To ascertain the actual situation, I declared a direct investigation again on the subject on 14 November 2003 (see **Fig. 3.2**).

Fig. 4.4

**Section 16(3) of
The Ombudsman Ordinance**

Where a report under subsection (1) to a head of the organisation is not, in the opinion of The Ombudsman, adequately acted upon –

(a) within the time specified in the report; or

(b) if no time is specified in the report, within such time as The Ombudsman is of the opinion is reasonable in all the circumstances,

The Ombudsman may submit the report and recommendations, together with such further observations as he thinks fit to make, to the Chief Executive.

4.31 Reporting to the Chief Executive is a step I do not take lightly. I much prefer seeing organisations concerned taking the initiative themselves to redress and improve matters.